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Attorneys for Defendant Facebook, Inc.,

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF MARTIE
KUTSCHER IN SUPPORT OF
FACEBOOK, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

I, Martie Kutscher, hereby declare as follows:

1. I am an associate at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Facebook in the above-captioned matter. I am a member in good standing of the State Bars of California, New Jersey, and New York. I submit this declaration in support of Facebook's Administrative Motion to File Under Seal. I make this declaration on my own knowledge, and I would testify to the matters stated herein under oath if called upon to do so.

2. On April 24, 2020, I emailed Plaintiffs' counsel a chart titled "Facebook's Proposed Custodians." This chart is attached as Exhibit C to the Parties' April 30, 2020 Joint Status Update (Dkt. 413) ("Exhibit C"). Exhibit C is attached as **Exhibit 1**.

3. Exhibit C was created exclusively to aid in the parties' negotiations about custodians, and it was designated "HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY." Exhibit C identifies current and former Facebook employees who likely possess documents responsive to certain of Plaintiffs' specific Requests for Production of Documents.

4. Exhibit C incorporates the list of custodians in a prior Federal Trade Commission ("FTC") investigation of Facebook and reveals the dates through which documents from each FTC custodian were produced to the FTC (and thereby reproduced to Plaintiffs). In accordance with an order from the Court (Dkt. 394), Facebook provided Plaintiffs the list of FTC custodians on an "attorneys' eyes only" basis. Public disclosure of Exhibit C would enable the public to identify many of the FTC custodians that Facebook provided to Plaintiffs on an "attorneys' eyes only" basis, as well as details about the documents produced from those custodians. This information is currently confidential.

5. Exhibit C contains personnel information about current and former Facebook employees, including the dates that they held particular positions.

6. Because Exhibit C matches current and former employees to categories of information that Plaintiffs seek, it would enable the public and competitors to deduce information about confidential aspects of Facebook's business, such as which employees and departments are working on particular confidential matters, including business relationships with

third parties. Public access to this information could cause Facebook competitive harm and could lead competitors to attempt to recruit critical Facebook employees.

7. On April 30, 2020, Plaintiffs' counsel informed me that Plaintiffs do not oppose Facebook's Administrative Motion to File Under Seal.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 30, 2020 in Palo Alto, California.

/s/ Martie Kutscher

Martie Kutscher